BEST COPY
AVAILABLE

MONTANA LEGISLATIVE HISTORY

Chapter 143 19 93

Bill H _____ S 109 Original bill & history ___C

H. Committee on Judiciary			S. Committee on Judiciary		
Hearing Date(s)	Mar 03	✓ C	Hearing Date(s)	Jan 22	✓ C
	_____	___C		Jan 27	✓ C
	_____	___C		_____	___C
	_____	___C		_____	___C
Date Out	Mar 03	✓ C		Jan 27	✓ C

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

SB 107 INTRODUCED BY GAGE

PROVIDE STATE-TRIBAL COOPERATIVE AGREEMENT ON ALCOHOLIC BEVERAGE TAX

BY REQUEST OF DEPARTMENT OF REVENUE

1/08	INTRODUCED		
1/08	REFERRED TO TAXATION		
1/11	REREFERRED TO RULES		
1/11	TABLED IN COMMITTEE		

SB 108 INTRODUCED BY GAGE

GENERALLY REVISE CRIMINAL JUSTICE INFORMATION LAWS

BY REQUEST OF DEPARTMENT OF JUSTICE

1/08	INTRODUCED		
1/08	FISCAL NOTE REQUESTED		
1/08	REFERRED TO JUDICIARY		
1/15	FISCAL NOTE RECEIVED		
1/15	FISCAL NOTE PRINTED		
1/22	HEARING		
1/27	COMMITTEE REPORT—BILL PASSED		
1/28	2ND READING PASSED	46	1
1/29	3RD READING PASSED	44	3
	TRANSMITTED TO HOUSE		
1/30	FIRST READING		
1/30	REFERRED TO JUDICIARY		
3/03	HEARING		
3/06	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/11	2ND READING CONCURRED AS AMENDED	95	2
3/15	3RD READING CONCURRED	95	4
	RETURNED TO SENATE WITH AMENDMENTS		
3/18	2ND READING AMENDMENTS NOT CONCURRED	49	0
3/22	CONFERENCE COMMITTEE APPOINTED		
4/21	CONFERENCE COMMITTEE REPORT NO. 1		
4/22	2ND READING CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	48	0
4/22	3RD READING CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	48	0
	HOUSE		
4/05	CONFERENCE COMMITTEE APPOINTED		
4/21	CONFERENCE COMMITTEE REPORT NO. 1		
4/22	2ND READING CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	98	0
4/22	3RD READING CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	98	2
4/28	SIGNED BY PRESIDENT		
4/28	SIGNED BY SPEAKER		
4/28	TRANSMITTED TO GOVERNOR		
5/03	SIGNED BY GOVERNOR CHAPTER NUMBER 603 EFFECTIVE DATE: 10/01/93		

SB 109 INTRODUCED BY DOHERTY

EXPAND CRIMINAL CODE DEFINITION OF "SERIOUS BODILY INJURY"

1/08	INTRODUCED
1/08	REFERRED TO JUDICIARY
1/08	FISCAL NOTE REQUESTED
1/14	FISCAL NOTE RECEIVED

1/14	FISCAL NOTE PRINTED		
1/22	HEARING		
1/28	COMMITTEE REPORT—BILL PASSED AS AMENDED		
1/29	2ND READING PASSED	47	0
1/30	3RD READING PASSED	42	0
	TRANSMITTED TO HOUSE		
2/01	FIRST READING		
2/01	REFERRED TO JUDICIARY		
3/03	HEARING		
3/04	COMMITTEE REPORT—BILL CONCURRED		
3/06	2ND READING CONCURRED	92	7
3/09	3RD READING CONCURRED	85	12
	RETURNED TO SENATE		
3/15	SIGNED BY PRESIDENT		
3/16	SIGNED BY SPEAKER		
3/17	TRANSMITTED TO GOVERNOR		
3/22	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 143		
	EFFECTIVE DATE: 10/01/93		

SB 110 INTRODUCED BY TOEWS

ESTABLISH FEE FOR TEMPORARY REGISTRATION FOR PROPORTIONALLY REGISTERED VEHICLES

BY REQUEST OF DEPARTMENT OF TRANSPORTATION

1/08	INTRODUCED		
1/08	REFERRED TO HIGHWAYS & TRANSPORTATION		
1/08	FISCAL NOTE REQUESTED		
1/13	FISCAL NOTE RECEIVED		
1/14	FISCAL NOTE PRINTED		
1/14	HEARING		
1/15	COMMITTEE REPORT—BILL PASSED AS AMENDED		
1/16	2ND READING PASSED	46	1
1/18	3RD READING PASSED	47	1
	TRANSMITTED TO HOUSE		
1/19	FIRST READING		
1/19	REFERRED TO HIGHWAYS & TRANSPORTATION		
1/27	HEARING		
1/29	COMMITTEE REPORT—BILL CONCURRED		
2/01	2ND READING CONCURRED	86	12
2/03	3RD READING CONCURRED	87	12
	RETURNED TO SENATE		
2/08	SIGNED BY PRESIDENT		
2/09	SIGNED BY SPEAKER		
2/09	TRANSMITTED TO GOVERNOR		
2/11	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 32		
	EFFECTIVE DATE: 07/01/93		

SB 111 INTRODUCED BY HARP

CREATE PROPERTY MANAGER'S LICENSE

BY REQUEST OF BOARD OF REALTY REGULATION

1/08	INTRODUCED
1/08	REFERRED TO BUSINESS & INDUSTRY
1/08	FISCAL NOTE REQUESTED
1/12	FISCAL NOTE RECEIVED
1/13	FISCAL NOTE PRINTED
1/14	HEARING

STATE OF MONTANA - FISCAL NOTE
Form BD-15
In compliance with a written request, there is hereby submitted a Fiscal Note for SB0109, as introduced.

SCRIPTION OF PROPOSED LEGISLATION:
act expanding the definition of "serious bodily injury" in criminal law and amending various definitions.

SUMPTIONS:
. The bill will have no material fiscal impact.

ISCAL IMPACT:
one.

David Lewis 1-13-93
DAVID LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Steve Doherty 1/14/93
STEVE DOHERTY, PRIMARY SPONSOR DATE

Fiscal Note for SB0109, as introduced

SB 109

first offenses. Senator Towe said you cannot defer imposition on a DUI offense. Senator Van Valkenburg said the maximum sentence on a first offense DUI is six months. Senator Van Valkenburg said there is a maximum sentence of six months for other offenses, so DUI first offenses should have a maximum sentence of six months also.

Chair Yellowtail said if we set a maximum sentence of six months for DUI first offense, the legislature is accomplishing the purpose of being able to impose the condition on the sentence, as well as having that person engage in a treatment program.

Senator Grosfield said that would only relate to DUI.

Chair Yellowtail said misdemeanors would be left. Senator Grosfield said the six months Senator Van Valkenburg has in SB 125 is an arbitrary number. Senator Grosfield said that would mean that a defendant could be sentenced for ten days, but would have to be good for six months. Senator Grosfield said that is getting beyond the intent of the legislature. If the Committee would raise the maximum on first offense DUI, that would solve the problem. Senator Towe agreed.

Chair Yellowtail asked the proponents of SB 125 to consider the issues and suggest something to the legislature. Chair Yellowtail said the case of the misdemeanor ten day sentence had merit, if the condition was satisfactory completion of a treatment program that extends beyond the ten day maximum sentence.

Closing by Sponsor:
Senator Van Valkenburg closed.

HEARING ON SB 109

Opening Statement by Sponsor:
Senator Doherty, District 20, said SB 109 has in its title "an act expanding the definition of serious bodily injury in criminal law." Senator Doherty told the Committee the title should be more appropriately "clarified." The first fourteen pages of the bill clarifies certain language. Page 14 is the definition of serious bodily injury. SB 109 would tie down a time factor to make sure the person responsible for the injury is charged with the consequences of the act at the time of injury and not for any intervening actions.

Proponents' Testimony:
John Conner, Montana County Attorneys Association, said SB 109 was suggested by professors at the law school, who teach criminal law and procedure, to cure a problem that has existed in criminal law, since the Criminal Code in 1973. SB 109 proposes to amend

language to alleviate gender biased and grammatical problems. The substance of SB 125 is in subsection 59, page 14. The definition of serious bodily injury has been a source of problem for prosecutors and courts. The intent of the code, when it was drafted, was to define crime in an objective term. Outside factors should not bear upon issues of guilt or innocence, it should be the act of the defendant. Under this definition, it is possible to violate the principle by making guilt or innocence depend upon acts that occur after the time of the omission of the offense. For example, if a victim received appropriate medical treatment which may have substantitially lessened the risk of death, serious impairment, or disfigurement. SB 109 seeks to make it clear that risk of death, substantial risk of serious impairment or protracted loss are to be determined at the time injuries occur, when the defendant commits the act for which he is charged. Mr. Conner asked the Committee to give SB 109 consideration with a DO PASS recommendation.

Opponents' Testimony:
NONE

Questions From Committee Members and Responses:
Senator Grosfield asked Mr. Conner about the substantial risk of serious mental illness or impairment. Mr. Conner said that language has been part of the law since 1973. Serious mental illness relates to situations where one might suffer injuries which develop into serious mental illness, like emotional distress that becomes progressively worse over time. Clarifying the definition, one could argue that the injury would be less severe when incurred and became more severe. In that instance, it would work for the defendant, rather than the prosecution. This amendment clarifies the language so there is not a question of injury. Mr. Connor said that if injury is caused to someone, and it results in serious mental illness, then it ought to be a criminal act that results in severe penalties.

Senator Towe commented on the meaning of serious permanent disfigurement. If someone is brandishing a knife and nicks a person in the ear, but leaves no permanent injury, he would be guilty of a substantial risk of serious permanent disfigurement. At the present time, serious bodily injury means a risk of death, or causing serious bodily disfigurement. Unless the person with the knife has actually disfigured someone, he is not guilty. SB 109 would make him guilty just by brandishing the knife because a substantial risk has been created.

Mr. Conner said that was not the intention of SB 109, however it may need to be clarified. Mr. Conner does not feel it would be a problem in criminal law. When a person is threatening someone with a knife, they would not be charged for causing serious bodily injury unless injuries were sustained. Mr. Conner suggested the language be struck and insert, "these injuries, or

this risk, or this disfigurement, shall be determined at the time the injury occurs." Senator Towe agreed.

Valencia Lane agreed that Senator Grosfield and Senator Towe had a legitimate concern on how the language was drafted. Ms. Lane suggested a sentence to say, "the injury will be determined at the time of the injury."

Chair Yellowtail said the Committee understands the intent of SB 109, but would like Mr. Conner to work with Ms. Lane on the amendments to SB 109.

Closing by Sponsor:
Senator Doherty closed.

ADJOURNMENT

Adjournment: 11:48 a.m.

Wm Yellowtail
BILL YELLOWTAIL, Chair

Rebecca Court
REBECCA COURT, Secretary

BY/rc

ROLL CALL

SENATE COMMITTEE Judiciary DATE 1-22-93

NAME	PRESENT	ABSENT	EXCUSED
Senator Yellowtail	X		
Senator Doherty	X		
Senator Brown	X		
Senator Crippen			X
Senator Grosfield	X		
Senator Halligan			X
Senator Harp	X		
Senator Towe	X		
Senator Bartlett	X		
Senator Franklin	X		
Senator Blaylock	X		
Senator Rye			X

FC8

Attach to each day's minutes

DATE 1-22-93

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: S.B. 108 - S.B 109

S.B. 125-

Name	Representing	Bill No.	Check One: Support	Oppose
RANDI HOOD	SELF	125	✓	
John Connor	MT County Attys Assn	109		
"	Crim Proced. Comm	125		
CRAIG L HOPPE	MT MAGISTRATES ASSN	125	✓	
Peter Funk	Dept. of Justice	108		
David Hill	City of Helena + Commission on Sentencing Limitations	125	✓	
Gregory G Mohr	Montana Magistrates Assn	125	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

F1C

Motion:
Senator Doherty moved to amend SB 109. (Exhibit #8)

Discussion:
Valencia Lane explained the amendments.

Senator Halligan asked if there was opposition to SB 109.

Senator Doherty said there was no opposition, but there was a question of determining serious bodily injury. Senator Doherty said at the time of the injury there would have to be serious permanent injury. Senator Doherty said that was the reason for the amendment.

Senator Grosfield asked Valencia Lane if amendment five includes reference to serious mental illness. Ms. Lane said yes, because defining serious bodily injury would include serious mental illness or impairment as injuries.

Senator Doherty told the Committee there has to be an injury to the body, aside from just mental illness or impairment.

Senator Grosfield asked Senator Doherty if the term includes serious mental illness or impairment in the context of bodily injury. Senator Doherty said yes.

Senator Towe told the Committee on page 2, lines 10 through 12, bodily injury is defined as including mental illness and impairment. Senator Towe said SB 109 does not expand or retract any of the existing law.

Senator Halligan asked Senator Doherty if he supported the amendments. Senator Doherty said yes.

Vote:
Motion to amend SB 109 CARRIED UNANIMOUSLY.

Motion/Vote:
Senator Doherty moved SB 109 DO PASS AS AMENDED. The motion CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON SB 125

Discussion:
Valencia Lane told the Committee that John Conner, Attorney General's Office, offered amendments four and five. Ms. Lane said John Conner agreed with the bill as it stands with the amendments. Ms. Lane said amendment one, two, and three were

ROLL CALL

SENATE COMMITTEE Judiciary DATE 1-27-93

NAME	PRESENT	ABSENT	EXCUSED
Senator Yellowtail	X		
Senator Doherty	X		X
Senator Brown	X		
Senator Crippen	X		
Senator Grosfield	X		
Senator Halligan	X		
Senator Harp	X		
Senator Towe	X		
Senator Bartlett	X		
Senator Franklin	X		
Senator Blaylock	X		
Senator Rye	X		

FC8

Attach to each day's minutes

SENATE STANDING COMMITTEE REPORT

January 27, 1993

MR. PRESIDENT:
We, your committee on Judiciary having had under consideration Senate Bill No. 109 (first reading copy -- white), respectfully report that Senate Bill No. 109 be amended as follows and as so amended do pass.

Signed: Wm Yellowtail
Senator William "Bill" Yellowtail, Chair

That such amendments read:

1. Page 14, line 5.
Following: "(59)"
Insert: "(a)"

2. Page 14, line 6.
Following: "that"
Insert: ": (i)"
Following: "death"
Insert: ";"
Strike: "or"
Following: "~~which~~"
Strike: "that"

3. Page 14, line 7.
Following: line 6
Insert: "(ii)"
Following: "causes"
Strike: "or creates a substantial risk of"

4. Page 14, line 8.
Strike: "of"

5. Page 14, line 9.
Following: "organ"
Insert: "; or
(iii) at the time of injury, can reasonably be expected to result in serious permanent disfigurement or protracted loss or impairment of the function or process of any bodily member or organ"
Strike: "It"
Insert: "(b) The term"

-END-

__ Amd. Coord.
__ Sec. of Senate

211353SC.Sma

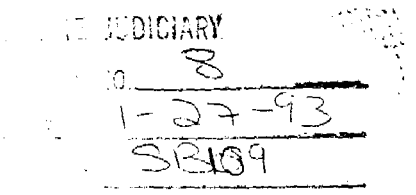
Amendments to Senate Bill No. 109
First Reading Copy

For the Committee on Judiciary

Prepared by Valencia Lane
January 25, 1993

1. Page 14, line 5.
Following: "(59)"
Insert: "(a)"

2. Page 14, line 6.
Following: "that"
Insert: ": (i)"
Following: "death"
Insert: ";"
Strike: "or"
Following: "~~which~~"
Strike: "that"



3. Page 14, line 7.
Following: line 6
Insert: "(ii)"
Following: "causes"
Strike: "or creates a substantial risk of"

4. Page 14, line 8.
Strike: "of"

5. Page 14, line 9.
Following: "organ"
Insert: "; or
(iii) at the time of injury, can reasonably be expected to result in serious permanent disfigurement or protracted loss or impairment of the function or process of any bodily member or organ"
Strike: "It"
Insert: "(b) The term"

or human-readable form, computer services, any other tangible or intangible item of value relating to a computer, computer system, or computer network, and any copies thereof.

(55) "Property of another" means real or personal property in which a person other than the offender has an interest which that the offender has no authority to defeat or impair, even though the offender himself may have an interest in the property.

(56) "Public place" means any place to which the public or any substantial group thereof has access.

(57) "Public servant" means any officer or employee of government, including but not limited to legislators, judges, and firefighters, and any person participating as a juror, advisor, consultant, administrator, executor, guardian, or court-appointed fiduciary. The term does not include witnesses. The term "public servant" includes one who has been elected or designated to become a public servant.

(58) "Purposely"--a person acts purposely with respect to a result or to conduct described by a statute defining an offense if it is his the person's conscious object to engage in that conduct or to cause that result. When a particular purpose is an element of an offense, the element is established although such the purpose is conditional, unless

the condition negatives the harm or evil sought to be prevented by the law defining the offense. Equivalent terms, such as "purpose" and "with the purpose", have the same meaning.

(59) (a) "Serious bodily injury" means bodily injury which that (i) creates a substantial risk of death; ~~or~~ which ~~that~~ (ii) causes ~~or creates a substantial risk of~~ serious permanent disfigurement or ~~of~~ protracted loss or impairment of the function or process of any bodily member or organ; or (iii) at the time of injury, can reasonably be expected to result in serious permanent disfigurement or protracted loss or impairment of the function or process of any bodily member or organ. It- The term includes serious mental illness or impairment.

(60) "Sexual contact" means any touching of the sexual or other intimate parts of the person of another for the purpose of arousing or gratifying the sexual desire of either party.

(61) "Sexual intercourse" means penetration of the vulva, anus, or mouth of one person by the penis of another person, penetration of the vulva or anus of one person by any body member of another person, or penetration of the vulva or anus of one person by any foreign instrument or object manipulated by another person for the purpose of arousing or gratifying the sexual desire of either party. Any penetration, however slight, is sufficient.

(62) "Solicit" or "solicitation" means to command, authorize, urge, incite, request, or advise another to commit an offense.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By CHAIRMAN RUSSELL FAGG, on March 3, 1993, at 9:00 a.m.

ROLL CALL

Members Present:

Rep. Russ Fagg, Chairman (R)
Rep. Randy Vogel, Vice Chairman (R)
Rep. Dave Brown, Vice Chairman (D)
Rep. Ellen Bergman (R)
Rep. Jody Bird (D)
Rep. Vivian Brooke (D)
Rep. Bob Clark (R)
Rep. Duane Grimes (R)
Rep. Scott McCulloch (D)
Rep. Jim Rice (R)
Rep. Angela Russell (D)
Rep. Tim Sayles (R)
Rep. Liz Smith (R)
Rep. Bill Tash (R)
Rep. Howard Toole (D)
Rep. Tim Whalen (D)
Rep. Karyl Winslow (R)
Rep. Diana Wyatt (D)

Members Excused: None

Members Absent: None

Staff Present: John MacMaster, Legislative Council
Beth Miksche, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: SB 109, SB 125, SB 108
Executive Action: SB 109, SB 140, SB 108, SB 78

HEARING ON SB 109

Opening Statement by Sponsor:

SEN. STEVE DOHERTY, Senate District 20, Great Falls, said this bill is an act expanding the definition of "serious bodily

injury" in criminal law to include bodily injury that creates a substantial risk of serious permanent disfigurement or of protracted loss or impairment of the function or process of any bodily member or organ.

Proponents' Testimony:

John Conner, Attorney General's Office and representing the Montana County Attorneys Association (MCAA), noted that the bill had been requested by the **MCAA**, and it was suggested by the University of Montana Law School to correct a problem in the law since this code was enacted in 1973. When the bill was considered in the Senate, the Senate added the third subsection to make the language clearer. This bill simply tries to bring the rest of that statute in line with the courts. It also expands the definition of serious bodily injury.

Opponents' Testimony: None

Questions From Committee Members and Responses: None

Closing by Sponsor: None

HEARING ON SB 125

Opening Statement by Sponsor:

SEN. FRED VAN VALKENBURG, Senate District 30, Missoula, explained that SB 125 is a clean up bill from the 1991 legislative session. It was patterned after a bill requested by the Montana Criminal Procedure Committee to update the state's criminal procedure code. That bill died in committee in 1989 but passed in 1991. This particular bill, which is about one-fourth the size of the 1989 bill, simply makes some changes to the difference between city courts and district courts. A number of references in the bill are now clearly defined.

SEN. VAN VALKENBURG addressed two significant new areas in the bill: clarification as to who is responsible for investigating crimes and suspension of a sentence in a misdemeanor.

Proponents' Testimony:

Robert L. Deschamps, County Attorney, Missoula County and Chairman, Montana Criminal Procedure Committee (MCPC), said that in the mid-1980s, the Montana Supreme Court and the Montana State Bar Association proposed changes for this bill. There are too many inconsistencies in the law.

HOUSE OF REPRESENTATIVES

Judiciary COMMITTEE

ROLL CALL DATE 3-3-93

NAME	PRESENT	ABSENT	EXCUSED
Rep. Russ Fagg, Chairman	✓		
Rep. Randy Vogel, Vice-Chair	✓		
Rep. Dave Brown, Vice-Chair	✓		
Rep. Jodi Bird	✓		
Rep. Ellen Bergman	✓		
Rep. Vivian Brooke	✓		
Rep. Bob Clark	✓		
Rep. Duane Grimes	✓		
Rep. Scott McCulloch	✓		
Rep. Jim Rice	✓		
Rep. Angela Russell	✓		
Rep. Tim Sayles	✓		
Rep. Liz Smith	✓		
Rep. Bill Tash	✓		
Rep. Howard Toole	✓		
Rep. Tim Whalen	✓		
Rep. Karyl Winslow	✓		
Rep. Diana Wyatt	✓		

HR:1993
wp.rollcall.man
CS-09

HOUSE STANDING COMMITTEE REPORT

March 3, 1993

Mr. Speaker: We, the committee on Judiciary report that Senate Bill 109 (third reading copy -- blue) be concurred in .

Signed: _____

Russ Fagg, Chair

Carried by: Rep. Vogel

Committee Vote:
Yes 12, No 8.

HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

Judiciary COMMITTEE BILL NO. SB 109

DATE March 3 1993 SPONSOR(S) L. Doherty

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
John Connor	MT County Attys Assn	X	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.